

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

MID MICHIGAN MEDICAL CENTER-CLARE

Employer

and

CASE 7-RD-3388

JEFFERY REIMER, An Individual

Petitioner

and

**LOCAL 79, SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO**

Union

APPEARANCES:

Robert Norcross, Attorney, of Holland, Michigan, for the Employer.

Jeffrey Reimer, of Lansing, Michigan, for the Petitioner.

James M. Lowery, III, of Detroit, Michigan, for the Union.

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:^{1/}

¹ The Employer and Union filed briefs, which were carefully considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer operates an acute care hospital in Clare, Michigan. Since at least 1990, the Union has represented a unit of registered nurses (RN unit)² at the Employer.³ On March 11, 1993, the Union was certified as the bargaining representative for a unit of technical employees (tech unit).⁴ The RN unit is currently comprised of 66 employees, and the tech unit consists of 74 employees. The Petitioner seeks a decertification election in a combined unit of registered nurses and technical employees, contending that the RN unit and the tech unit have been merged into a single unit. The Petitioner indicated his interest in separate elections for the two units if the request for an election in the combined unit is denied. The incumbent Union moved to dismiss the petition on the ground that the two units have not been merged and thus the petitioned-for unit is inappropriate. The Union further contends that the Petitioner is ineligible to file a petition for the tech unit. The Employer asserts that, by their conduct, the Employer and the Union have effectively merged the RN unit and the tech unit into a single unit. In the alternative, the Employer argues that if the units have not been merged, an *Armour-Globe* self-determination election should be directed.⁵

² The RN unit, as set forth in the most recent collective-bargaining agreement, is described as follows:

All full-time and regular part-time registered nurses, employed by the Medical Center at its 104 West Sixth St., Clare, MI facility; but excluding director of nurses, head nurses, managerial employees, confidential employees, guards and supervisors as defined in the Act and all other employees.

³ The record does not establish the date the Union became the exclusive collective-bargaining representative for the RN unit, nor does it establish whether the unit was certified or voluntarily recognized.

⁴ The tech unit, as set forth in the most recent collective-bargaining agreement, is described as follows:

All full-time and regular part-time technical employees including licensed practical nurses, registered respiratory therapists, certified respiratory therapy technicians, pharmacy technicians, CT technologists, nuclear medical technologists, ultra-sonographers, operating room technicians and physical therapy assistants employed by the Employer at its Hospital facility located at 104 Sixth St., St. Clare, MI; but excluding all physical therapy aides, contract service employees, diagnostic technicians, respiratory therapy assistants, contingent employees, service and maintenance employees, business office clerical employees, office clerical employees, confidential employees, managers, registered nurses, professional employees, guards and supervisors as defined in the Act, and all other employees.

⁵ *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

For the reasons set forth below, I find that the RN unit and the tech unit are discrete bargaining units. However, I deny the Union's motion to dismiss as an election in each separate unit is appropriate.

The current contract between the Union and the Employer is effective from August 11, 2000, through June 30, 2003, and covers both the RN unit and the tech unit. The units are set forth explicitly and separately, designated as "Unit A" and "Unit B," under the contract's recognition clause. The tech unit specifically excludes registered nurses. The contract provides for separate stewards for each unit, but employs a common grievance procedure. The contract makes no provision for cross-unit seniority, with the exception of LPNs who have worked at the Employer for at least five years. Such LPNs are accorded two years of seniority if they secure an RN position. The contract permits an employee whose position is eliminated or reduced to displace a less senior employee only within his or her own bargaining unit. Staff reductions and awards of overtime also take place in accordance with seniority in the individual bargaining units. If no one from the bargaining unit in which an overtime opportunity exists requests to work the additional hours, the other unit will be offered the overtime. The contract contains differing rates of pay for RN and tech employees, although they share common fringe benefits.

No evidence was adduced concerning the manner of negotiation, execution, ratification, or application of the collective-bargaining agreement. At hearing, the Employer's assistant vice president of human resources conceded that it was her understanding that the two units were separate.

As a general rule, the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *Mo's West*, 283 NLRB 130 (1989). However, parties to a collective-bargaining relationship may, by contract, bargaining history, and course of conduct, merge existing certified or recognized units into a single appropriate unit. A merger of two or more units has the effect of destroying the separate identity of the prior recognized or certified units. *White-Westinghouse Corp.*, 229 NLRB 667, 672 (1977); *Albertson's, Inc.*, 307 NLRB 338 (1992).

I conclude that there is no evidence that the parties agreed to merge the two units or that the units have in practice been treated as a single unit. The current contract sets forth both units separately. The contract's description for the tech unit expressly excludes registered nurses. Compare with *Green-Wood Cemetery*, 280 NLRB 1359 (1986) (collective-bargaining agreement covering merged unit deleted language excluding classification of employees present in one unit's description prior to merger). The contract provides for separate stewards for each unit, minimal cross-seniority, bumping only within an employee's respective unit, and overtime awarded preferentially to the affected unit. See *Sears, Roebuck & Co.*, 253 NLRB 211 (1980). Further, the

record is devoid of “unmistakable evidence that the parties mutually agreed to extinguish the separateness of the previously recognized or certified units.” *Utility Workers Local 111*, 203 NLRB 230 (1973), *enfd.* 490 F.2d 1383 (6th Cir. 1974). Accordingly, I find that the parties’ course of conduct, contract, and collective-bargaining history, as evidenced by this record, fails to establish an intent to merge the RN unit with the tech unit.

The Employer urges that, in the absence of a finding that the two units were merged, the separate units should be afforded the opportunity to vote in a self-determination election. However, a self-determination election is a method by which a union may add unrepresented employees to the contractual unit. In such an election, if a majority of the employees vote against representation, they are considered as indicating a desire to remain unrepresented, but if a majority vote for the Petitioner, they are deemed to have indicated their desire to become part of the existing unit, represented by the incumbent union. *Warner-Lambert Co.*, 298 NLRB 993 (1990). In this case, the two units have already been recognized or certified as appropriate units for bargaining. Thus, I find that a self-determination election is inappropriate.

The Union in its motion to dismiss notes that Petitioner is a member of the RN unit, and that no technical bargaining unit member has filed a petition for decertification of the tech unit. To raise a valid question concerning representation, a petition need not be filed by a member of the bargaining unit in which decertification is sought. *Bernson Silk Mills*, 106 NLRB 826 (1953). Thus, the Petitioner has standing to file for decertification in both units. For the above reasons, the Union’s motion to dismiss is hereby denied. I conclude that it is appropriate under the petition in this case to conduct separate elections in the RN unit and the tech unit.

5. In view of the foregoing, the following employees in the currently recognized units constitute appropriate units for collective bargaining within the meaning of Section 9(b) of the Act and I hereby direct an election in each separate unit:⁶

UNIT A: All full-time and regular part-time registered nurses, employed by the Employer at its 104 Sixth St., Clare, Michigan facility; but excluding directors of nurses, head nurses, managerial employees, confidential employees, guards and supervisors as defined in the Act and all

⁶ As two units were found appropriate herein, the Petitioner is accorded a period of 14 days from the date of this Decision and Direction of Elections in which to submit to the undersigned an additional showing of interest for Unit B (tech unit). If no additional showing of interest is submitted for Unit B, an election will be conducted only in Unit A. In the event the Petitioner does not wish to proceed with the elections, it may withdraw its petition without prejudice by notice to the undersigned within 7 days from the date of this Decision and Direction of Elections.

other employees.

UNIT B: All full-time and regular part-time technical employees including licensed practical nurses, registered respiratory therapists, certified respiratory therapy technicians, pharmacy technicians, CT technologists, nuclear medical technologists, ultra-sonographers, operating room technicians and physical therapy assistants employed by the Employer at its Hospital facility located at 104 Sixth St., St. Clare, Michigan; but excluding all physical therapy aides, contract service employees, diagnostic technicians, respiratory therapy assistants, contingent employees, service and maintenance employees, business office clerical employees, office clerical employees, confidential employees, managers, registered nurses, professional employees, guards and supervisors as defined in the Act, and all other employees.

Those eligible shall vote as set forth in the attached Direction of Elections.

Dated at Detroit, Michigan, this 29th day of April 2003.

(SEAL)

/s/ Joseph A. Barker
Joseph A. Barker
Acting Regional Director
National Labor Relations Board
Region Seven
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226-2569

Classification

347 8010 5000